



2024:KER:87679

CRL.MC NO. 4723 OF 2018

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C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 /30TH KARTHIKA, 1946

CRL.MC NO. 4723 OF 2018

CC NO.846 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,
KOZHIKODE

PETITIONER/ACCUSED:

DR.BEENA BAHULEYAN
AGED 49 YEARS, D/O.BAHULEYAN,
ASST.PROF OF OBG, MEDICAL COLLEGE HOSPITAL,
KOZHIKODE.

BY ADVS. SRI.SHYAM PADMAN
SRI.C.M.ANDREWS
SMT.ANITYA ANNIE MATHEW
SMT.BOBY M.SEKHAR
KUM.LAYA MARY JOSEPH
SRI.P.T.MOHANKUMAR
SMT.NEETHU RAVIKUMAR
SRI.NABIL KHADER
SMT.REVATHY P. MANOHARAN

RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682018.



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**2 K.K.BIJU
CIRCLE INSPECTOR, CHEVAYUR POLICE STATION,
KOZHIKODE -673012.**

**BY ADV.
SRI.RENJITH.T.R, SR.PP**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 21.11.2024, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**



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“C.R.”

P.V.KUNHIKRISHNAN, J.

Cri.M.C. No.4723 of 2018

Dated this the 21st day of November, 2024

ORDER

Petitioner is the accused in C.C.No.846/2017 on the file of the Judicial First Class Magistrate Court-I, Kozhikode. The above case is taken on file by the learned Magistrate based on Annexure-A1 report submitted by the Sub Inspector of Police, Chevayur. The offence alleged against the petitioner is under Section 166B of the Indian Penal Code (for short, IPC).

2. The allegation against the petitioner is that, when the girl was brought for examination, the petitioner, who was a doctor, expressed her unwillingness to examine the child and also abused and insulted the victim, her mother, and police officers



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who escorted the victim, all in the presence of other patients. It was also alleged that the petitioner sent back the victim and others without properly examining her. Moreover, she did not issue a medical certificate to the victim, as a result of which the police officers were constrained to produce the juvenile girl before the Magistrate without a medical certificate. Since the Magistrate insisted that the police personnel produce a medical certificate, they had to return to the Medical College Hospital again, and by the time they reached there around 8:30 pm, the petitioner had left the hospital. The police officers informed the Medical College authorities of the seriousness of the situation, and as a result, the certificate was issued by another doctor at 11:20 pm. Hence, it is alleged that the accused committed the offence under Section 166B IPC. According to the petitioner, even if the entire allegations are accepted, no offence is made out



against the petitioner.

3. Heard the Senior Counsel Sri.Shyam Padman, assisted by his retaining counsel, for the petitioner. I also heard the learned Senior Public Prosecutor.

4. The counsel for the petitioner submitted that, on 10.09.2016, at around 10:45 pm, one Mr. Resjil had lodged a complaint at Chevayur Police Station that his sister Roshila, stated to be aged 17 years, was missing from the afternoon of the said day. In his statement, he categorically stated that the said Roshilla had around one month back been missing, and on the complaint filed by the mother, she was found with one Shamseer alias Sanjay and that she was taken back home. Annexure-A2 is the statement of Resjil. Based on Annexure-A2 statement, Chevayur Police registered Crime No.1045/2016, a child missing case. Annexure-A3 is the FIR. Later, the child was



found by the police near the Super Specialty Block of the Medical College compound around noon on 17.09.2016. The child was brought to the Department of Gynecology in the late evening of 17.09.2016.

5. It is submitted that the petitioner was on duty as the Senior Medical Officer and was attending labour room duty on the said day. She was preoccupied with an emergency laparotomy of a patient. As the Junior Medical Officer was a male, he could not examine the child under the POCSO Act. Annexure-A4 is produced to prove the emergency laparotomy of the patient Susmitha, issued by the Superintendent of Medical College Hospital. After the procedure, when the petitioner was intimated about the child being brought for examination, she went to the specifically earmarked private area in the labour room to examine the child. It is submitted that the petitioner examined the girl. In the meantime, the



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petitioner was called to the emergency operation theatre regarding the case of another patient. Hence, with specific instructions to the attending police officials to get the official seal in the certificate already signed and kept ready by the petitioner and to collect the specimens from the Department, she rushed to the emergency operation theatre. After attending that patient, the petitioner returned to the labour room and found that the victim, her relatives and the police personnel had already left the hospital without collecting the medical certificate prepared by the petitioner. It is the case of the petitioner that she waited there for some more time, and when the victim, her relatives or the police did not turn up, she left the labour room, attended to some other patients in the operation theatre and returned to her home after 8:00 pm, i.e., after her duty time. Annexure-A5 is the medical report produced by the petitioner and



Annexure-A6 is the report of the operation of a patient by the name Sini. It is the case of the petitioner that the Women Civil Police Officer, in the middle of the heated argument with the missing person, did not get the said specimens from the office and had proceeded to produce the missing person before the Magistrate at around 8:45 pm on 17.09.2016, and the Magistrate on noticing that the medical examination was already conducted, directed to produce the missing person with the medical certificate. On the very same day, when the petitioner was at home, at around 10.00 pm, the petitioner received a call from the hospital informing her that the police officers had come back to collect the medical certificate of the victim girl. It is the case of the petitioner that she rushed back to the hospital by driving alone and handed over the certificate to the officers. Thereafter, the missing person was again produced before the Magistrate at



12:05 night. It is also submitted by the petitioner that the learned Magistrate directed to produce the missing person before the Child Welfare Committee as per Annexure-A7. Therefore, it is submitted that the allegations against the petitioner are not correct. It is also submitted by the counsel that the basic ingredients of Section 166B IPC is not made out in this case. Hence, it is submitted that the continuation of the prosecution against the petitioner is an abuse of the process of the court.

6. The learned Public Prosecutor submitted that the allegations against the petitioner are very serious and therefore, this Court may not quash the proceedings at the preliminary stage.

7. This Court called for the Trial Court Records and perused the same. The case is registered based on Annexure-A1 report submitted by the Police. Annexure-A10 is the statement given by the 2nd



respondent before the court. The learned Magistrate has taken cognizance under Section 166B IPC. Section 166B IPC is extracted hereunder:

*“166-B. **Punishment for non-treatment of victim.**—Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of Section 357-C of the Code of Criminal Procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”*

8. Section 166B deals about the punishment for non-treatment of victim. As per Section 166B, whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of Section 357C of the Code of Criminal Procedure, 1973, shall be punishable



for imprisonment for a term which may extend to one year or with fine or with both. Section 357C Cr.P.C. is also extracted hereunder:

*“357-C. **Treatment of victims**:-*

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.”

9. Section 357C says that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A,



376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code and shall immediately inform the police of such incident.

10. Admittedly, the victim produced by the Police before the petitioner herein is not a victim of any offence covered under Section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of IPC. If that be the case, the offence under Section 166B of the Indian Penal Code is not attracted, even if the entire allegations are accepted. To attract an offence under Section 166B IPC, contravention of Section 357C of the Criminal Procedure Code is necessary. Section 357C Cr.P.C. says that the hospital, public or private etc., should provide first aid or medical treatment, free of cost to victims of any offence covered under Section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code.



11. In such circumstances, as I mentioned earlier, in this case, the victim produced is not a victim of an offence under Section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of IPC, as on the time when she is produced. In such circumstances, the continuation of prosecution against the petitioner is not necessary.

12. But, before parting with the case, if the allegation against the petitioner, as stated in Annexure-A1 is correct, at least departmental action is necessary against her. This Court is aware that the Doctors community is working hard and generally, there is no allegation against them. But, after reading Annexure-A1 complaint and while quashing the proceedings against the petitioner based on a technical ground, this Court cannot stop there. Without expressing any opinion on the contents of Annexure-A1 complaint, I am of the opinion that, this



matter is to be considered by the competent authority, in accordance with the law. Therefore, a copy of this order is to be forwarded to the Director of Health Service, who will conduct an enquiry about the same by deputing a competent officer and based on the same do the needful, in accordance with the law, if necessary. I once again make it clear that, I have not considered the correctness of the allegation in Annexure-A1 complaint. The competent authority is free to conduct appropriate enquiry, in accordance with the law, after giving sufficient opportunity of hearing to the petitioner and also after perusing relevant records. Similarly, the petitioner has got a definite case that, she attended the victim produced before her and to substantiate her case, she is relying on several documents kept in the hospital. She states that, it is a false case foisted against her by the 2nd respondent. She produced some documents also to



prove her innocence. The morale of doctors is the backbone of health care. But if the allegations against the petitioner by the 2nd respondent are correct, it is very serious. Similarly, the police officer's badge is known as a symbol of trust, honour, and courage. To prove the same, an enquiry by a competent officer against the 2nd respondent based on the allegation of the petitioner is also necessary. The State Police Chief will depute a competent officer to enquire about the allegation against the 2nd respondent by the petitioner, after giving him sufficient opportunity of hearing.

Therefore, this Criminal Miscellaneous Case is allowed in the following manner:

- 1. All further proceedings against the petitioner in CC No.846/2017 on the file of Judicial First Class Magistrate Court-I, Kozhikode is quashed.*
- 2. The Registry will forward a copy of*



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this Order to the Director of Health Service, Thiruvananthapuram, and also to the State Police Chief forthwith for appropriate action, in accordance with the law.

3. *The Registry will return the Trial Court Records to the jurisdictional court, forthwith.*

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

JV/nvj



APPENDIX OF CRL.MC 4723/2018

PETITIONER ANNEXURES

- ANNEXURE A1** CERTIFIED COPY OF REPORT DATED 17/9/2016 SUBMITTED BY THE 2ND RESPONDENT AGAINST THE PETITIONER BEFORE JFCM-I, KOZHIKODE.
- ANNEXURE A2** CERTIFIED COPY OF THE STATEMENT OF SRI.RESJIL S.R. DATED 10/9/2016.
- ANNEXURE A3** CERTIFIED COPY OF THE FIR DATED 10/9/2016
- ANNEXURE A4** TRUE COPY OF THE DOCTORS SHEET REGARDING THE EMERGENCY LAPAROTOMY OF THE PATIENT SUSMITHA ISSUED BY THE SUPERINTENDENT OF MCH
- ANNEXURE A5** CERTIFIED COPY OF THE MEDICAL REPORT DATED 17/9/2016
- ANNEXURE A6** TRUE COPY OF THE REPORT OF OPERATION OF THE PATIENT MRS.SINI, AGED 35 YEARS, I.P.33133.
- ANNEXURE A7** CERTIFIED COPY OF THE REPORT DATED 17/9/2016
- ANNEXURE A8** CERTIFIED COPY OF THE STATEMENT OF THE CHILD ROSHILA RECORDED BY THE POLICE ON 17/9/2016
- ANNEXURE A9** CERTIFIED COPY OF STATEMENT OF ROSHILA BEFORE THE MAGISTRATE
- ANNEXURE A10** CERTIFIED COPY OF THE DEPOSITION OF



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**THE 2ND RESPONDENT BEFORE THE JFCM-I
COURT, KOZHIKODE**

**ANNEXURE A11 CERTIFIED COPY OF THE FINAL REPORT
DATED 17/9/2016.**

RESPONDENTS ANNEXURES : NIL

//TRUE COPY// PA TO JUDGE